

STATE OF INDIANA)
) SS:
COUNTY OF MARION) AVC NO. 01-019

IN RE: THE SMITH CO.,)
)
) Respondent.

FILED

MAR 21 2001

Sarah A. Taylor
CLERK OF THE COURT
MARION CIRCUIT COURT

ASSURANCE OF VOLUNTARY COMPLIANCE

The State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Justin G. Hazlett, and the Respondent, The Smith Co., enter into an Assurance of Voluntary Compliance ("Assurance") pursuant to Indiana Code § 23-7-8-9.

This Assurance is entered into without any adjudication of, or any admission with respect to, any issue of fact or law, and upon consent of the parties.

The parties agree that:

1. The Consumer Protection Division of the Office of the Attorney General has jurisdiction to investigate the matters hereinafter described, pursuant to the authority of Indiana Code § 4-6-9-4 and Indiana Code § 23-7-8-8.

2. Respondent The Smith Co. has its principal place of business at 4455 Connecticut Avenue, NW, Washington, DC 20008.

3. The terms of this Assurance apply to and are binding upon Respondent, its employees, agents, representatives, successors, and assigns.

4. Any term used in this Assurance that is explicitly defined by Indiana Code § 23-7-8-1 has the meaning set forth by the statute.

5. Respondent will comply with all the requirements of Indiana Code § 23-7-8-1 *et seq.*, including:

a. Before acting as a professional fundraiser consultant or professional solicitor in the State of Indiana on behalf of any charitable organization, Respondent will register with the Indiana Attorney General's Consumer Protection Division.

b. Respondent will notify the Division in writing within 180 days of any change in the information contained in Respondent's registration.

c. Before acting as a professional fundraiser consultant for any particular charitable organization, Respondent will enter into a written contract with the organization and will file this contract with the Division. All such contracts will:

- i. identify the services that Respondent is to provide; and,
- ii. state whether Respondent will at any time have custody of contributions.

d. Before acting as a professional solicitor or otherwise soliciting, Respondent will enter into a written contract with the charitable organization for which it is soliciting, and will file the contract with the Division. All such contracts will:

- i. specify the percentage of gross contributions which the charitable organization will receive or the terms upon which a determination can be made as to the amount of the gross revenue from the solicitation campaign that the charitable organization will receive. The amount that the charitable organization will receive will be expressed as a fixed percentage of the gross revenue or as a reasonable estimate of the gross revenue. If a fixed percentage is used, the percentage must exclude any amount that the charitable organization is to pay as expenses of the solicitation campaign, including the cost of any merchandise or

services sold; and,

ii. disclose the average percentage of gross contributions collected on behalf of charitable organizations that the charitable organizations received from Respondent for the three (3) years preceding the year in which the contract is formed.

e. Before beginning a solicitation campaign, Respondent will file a solicitation notice with the Division. The notice will include the following:

- i. a copy of Respondent's contract with the charitable organization;
- ii. the projected dates when soliciting will begin and end;
- iii. the location(s) and telephone number(s) from where solicitations will be conducted;
- iv. the name and residence address of each person responsible for directing and supervising the conduct of the campaign; and,
- v. if the solicitation is one in which a bona fide police, law enforcement, rescue squad, or fire department has authorized the use of the name "police", "law enforcement", "trooper", "rescue squad", "firemen", or "firefighter", the solicitation notice will include a copy of the written authorization given by such bona fide organization for which Respondent is soliciting.

f. Within 90 days of completing any solicitation campaign, other than one for which a bona fide police, law enforcement, rescue squad, or fire department has provided a written authorization to use the name "police", "law enforcement", "trooper", "rescue squad", "firemen", or "firefighter", Respondent will file with the Division an end-of-campaign report containing the following information:

- i. the total gross amount of money raised by Respondent and the charitable organization from donors;
 - ii. the total amount of money paid to or retained by Respondent;
 - iii. the total amount of money, excluding the amount identified in paragraph 5.f.ii. above, paid by the charitable organization as expenses as part of the solicitation campaign; and,
 - iv. the total amount of money received by the charitable organization after deducting the amounts identified in paragraphs 5.f.ii. and 5.f.iii. above.
- g. Respondent will keep accurate fiscal records regarding its activities in Indiana, and will retain such records for at least three (3) years after the end of the period of registration to which they relate.
- h. Respondent will disclose the following at the time of the solicitation and before the donor agrees to make a contribution:
- i. the name and, upon request, the address of the charitable organization that Respondent is representing;
 - ii. the fact that the person soliciting the contribution is, or is employed by, a professional solicitor, and the fact that the professional solicitor is compensated;
 - iii. the full name of the professional solicitor and, upon request, the telephone number the person being solicited can call to confirm the information provided under this section; and,
 - iv. the charitable purpose for which the funds are being raised.
- i. Respondent will mail a written confirmation within ten (10) days after

each solicitation in which a contribution is given. This confirmation will include the disclosures enumerated in paragraphs 5.h.i. and 5.h.ii. above.

- j. Respondent will not:
 - i. use the fact of registration as an endorsement by the State;
 - ii. use the name "police", "law enforcement", "trooper", "rescue squad", "firemen", or "firefighter" unless a bona fide police, law enforcement, rescue squad, or fire department authorizes its use in writing;
 - iii. misrepresent to anyone that the contribution will be used for a charitable purpose if it has reason to believe the contribution will not be used for a charitable purpose;
 - iv. misrepresent to anyone that another person endorses the solicitation unless that person has consented in writing to the use of the person's name for the purpose of endorsing the solicitation;
 - v. misrepresent to anyone that the contribution is solicited on behalf of anyone other than the charitable organization that authorized the solicitation; or
 - vi. collect or attempt to collect a contribution in person or by means of a courier unless:
 - a. the solicitation is made in person and the collection or attempt to collect is made at the time of the solicitation; or
 - b. the contributor has agreed to purchase goods or items in connection with the solicitation, and the collection or attempt to collect is made at the time of delivery of the goods or items.
6. The obligations agreed to in paragraph 5 above do not include all of the

obligations imposed upon Respondent by Indiana Code § 23-7-8-1 *et seq.* or other Indiana laws. Respondent acknowledges that, while it acts as a professional fundraiser consultant, professional solicitor, or otherwise solicits contributions in Indiana on behalf of a charitable organization, it is subject to all Indiana laws governing such activity, and agrees to comply with all applicable laws while acting in Indiana.

7. Upon execution of this Assurance, Respondent will pay a total of Five Hundred Dollars (\$500.00) to the Office of the Indiana Attorney General as costs of the Division's investigation of this matter.

8. Respondent will not represent that the Office of the Indiana Attorney General approves or endorses its past or future business practices, or that execution of this Assurance constitutes such approval or endorsement.

9. Respondent will fully cooperate with the Office of the Indiana Attorney General in the resolution of any future written complaints the Consumer Protection Division receives.

10. The Office of the Indiana Attorney General will file this Assurance with the Circuit Court of Marion County. The Court's approval of this Assurance will not act as a bar to any private right of action.


DATED this 20 day of February, 2001.

STATE OF INDIANA

RESPONDENT

STEVE CARTER
Attorney General of Indiana

THE SMITH CO.

by: 
Justin G. Hazlett
Deputy Attorney General
Attorney No. 22046-49

by: 
Marion Haraway McDonnell

in his/her capacity as

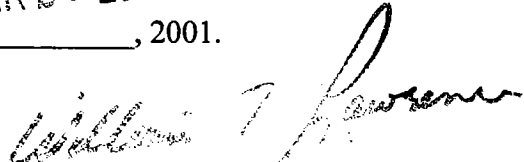
Vice President

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APPROVED this ____ day of _____, 2001.

MAR 21 2001



Judge, Marion Circuit Court